

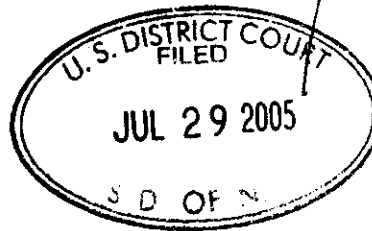
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SWAIN, J.

Harley I. Lewin (HL 1819)
 Scott Gelin (SG 9599)
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Attorneys for Plaintiffs Lucky Brand Dungarees, Inc. and Liz Claiborne, Inc.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 LUCKY BRAND DUNGAREES, INC.,
 LIZ CLAIBORNE, INC.,

Plaintiffs,

v.

ALLY APPAREL RESOURCES, LLC d/b/a
 GET LUCKY, KEY APPAREL
 RESOURCES, LTD., MARCEL FASHION
 GROUP, INC. and EZRA MIZRACHI,

Defendants.

JUDGE SWAIN

05 CV 6757
 Civ. No.

ORDER TO SHOW CAUSE

Upon the following annexed documents: (1) Memorandum of Law in Support of Plaintiffs' Application for a Preliminary Injunction; (2) Supporting declarations of Gene Bolmarcich, Esq., Terry G. Lankford, Amy Hennisch, Kimberley McCarthy and Dr. Erich Joachimsthaler and attached exhibits in support thereof; and (3) Plaintiffs' Complaint, Civil Cover Sheet and Rule 7.1 Statement, let all Defendants show cause on or before the ^{5th} ~~20th~~ day of August 2005 at 11:00 a.m./p.m. or as soon thereafter as counsel can be heard, in Courtroom 1305, in the United States District Court, Southern District of New York, 500 Pearl Street, New York, New York, why an Order pursuant to Federal Rule of Civil Procedure 65 and § 34 of the Lanham Act should not be entered granting Plaintiffs a preliminary injunction enjoining Defendants from the following:

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- (a) from using in any manner the marks within Plaintiffs' LUCKY Family of Marks, alone or in with any word or words which so resemble each said trademark as to be likely to cause confusion, deception or mistake on or in connection with the manufacture, distribution, advertising, offering for sale or sale of any product not originating with Plaintiffs, or not authorized by Plaintiffs to be sold in connection with each of the Plaintiffs' LUCKY Family of Marks;
- (b) from passing off, inducing, or enabling others to sell or pass off any product as and for products produced by Plaintiffs that are not Plaintiffs' or not produced under the control and supervision of Plaintiffs and approved by Plaintiffs for sale under the marks within Plaintiffs' LUCKY Family of Marks;
- (c) from committing any acts calculated to cause purchasers to believe that Defendants' products are those sold under the control and supervision of Plaintiffs, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiffs;
- (d) from further diluting and infringing the marks within Plaintiffs' LUCKY Family of Marks and damaging Plaintiffs goodwill; and
- (e) from otherwise competing unfairly with Plaintiffs' in any manner.

ORDERED, that Plaintiffs shall serve each Defendant with the (1) Memorandum of Law in Support of Plaintiffs' Application for a Preliminary Injunction; (2) Supporting declarations of Gene Bolmarcich, Esq., Terry G. Lankford, Amy Hennisch, Kimberley McCarthy and Dr. Erich Joachimsthaler and attached exhibits in support thereof; and (3) Plaintiffs' Summons, Complaint, Civil Cover Sheet and Rule 7.1 Statement on or before ^{August} ~~July~~ 2, 2005 by personal service or by overnight mail to each Defendant's address as set forth Plaintiffs' Complaint and Memorandum in Support of Plaintiffs' Application for a Preliminary Injunction.

ORDERED, that Defendants' answering papers, if any, shall be filed with the Clerk of this Court and served upon the attorneys for Plaintiffs by delivering copies thereof to the offices of Greenberg Traurig, 200 Park Avenue, New York, New NY, 10166, Attention: Scott Gelin, Esq., before ~~11:00 a.m./p.m.~~ on August 4th, 2005.

SO ORDERED:


United States District Judge 7/29/05
jmr

✓ DATE: July 29, 2005

✓ HOUR: 3:40 PM

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

05 CV 6757

LUCKY BRAND DUNGAREES, INC.; LIZ
CLAIBORNE, INC.

CIVIL ACTION NO. _____

Plaintiffs,

DECLARATION OF
KIMBERLEY MCCARTHY IN
SUPPORT OF PLAINTIFFS'
APPLICATION FOR A
PRELIMINARY INJUNCTION

v.

ALLY APPAREL RESOURCES LLC
D/B/A GET LUCKY, KEY APPAREL
RESOURCES, LTD., MARCEL FASHION
GROUP, INC. and EZRA MIZRACHI,

JUDGE SWAIN

Defendants.

KIMBERLEY MCCARTHY, under penalty of perjury, declares and says:

1. I am Vice President of George Arnold & Associates ("GAA") of Shelby, North Carolina. I am a private investigator licensed in North Carolina. I have participated in and/or conducted hundreds of trademark investigations involving counterfeit and infringing goods, as well as diverted (or "gray market") goods. I am familiar with investigations regarding counterfeit apparel and accessories.

2. I make this declaration in support of the application of the above-named Plaintiffs for a Preliminary Injunction. If called as a witness, I could testify to the following from personal knowledge and/or a review of GAA's files.

Discussions with David Cohen Vice President of Sales for Get Lucky/Ally Apparel

3. On April 18, 2005 I called Ally Apparel at 212-354-[9862]. The phone was answered by recorded message stating that the caller had reached Key Apparel and Get Lucky. I then reached an operator who informed me that Key Apparel and Ally Apparel

were the same entity. The operator then transferred me to "David" in sales. David informed me that Get Lucky is a line of men's clothing. He told me that GET LUCKY jeans retail for \$50 - \$60, GET LUCKY t-shirts retail for \$24 and GET LUCKY shorts retail for \$34.

4. David also told me that GET LUCKY was a brand that started in 1985 and that the trademark was owned by "a guy in Florida." I was told that the clothing was being made all over the country. Finally, he mentioned that a line of women's clothing would be coming out within six to eight months.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20 day of July, 2005 in Shelby, North Carolina.


KIMBERLY McCARTHY

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